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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JESUS ALVARADO and SANDRA M. ROTH, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION; and DOES 2 through 200, inclusive,

Defendants.

Case No. SACV07-00615 DOC(CTx)

ORDER ADOPTING STIPULATED PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulated Protective Order Re Confidential Information, filed on September 22, 2010, the terms of the protective order agreed to by the parties are adopted as a protective order of this Court.

The parties are expressly cautioned that the designation of any information, document, or thing as Confidential does not, in and of itself, create any entitlement to file such information, document, or thing, in whole or in part, under seal.

1 Accordingly, reference to this Order or to the parties' designation of any
2 information, document, or thing as Confidential is wholly insufficient to warrant a
3 filing under seal.

4
5 There is a strong presumption that the public has a right of access to judicial
6 proceedings and records in civil cases. In connection with non-dispositive motions,
7 good cause must be shown to support a filing under seal. The parties' mere
8 designation of any information, document, or thing as Confidential does not --
9 without the submission of competent evidence, in the form of a declaration or
10 declarations, establishing that the material sought to be filed under seal qualifies as
11 confidential, privileged, or otherwise protectible -- constitute good cause.

12
13 Further, if sealing is requested in connection with a dispositive motion or
14 trial, then compelling reasons, as opposed to good cause, for the sealing must be
15 shown, and the relief sought shall be narrowly tailored to serve the specific interest
16 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th
17 Cir. 2010). For each type of information, document, or thing sought to be filed or
18 introduced under seal in connection with a dispositive motion or trial, the party
19 seeking protection must articulate compelling reasons, supported by specific facts
20 and legal justification, for the requested sealing order. Again, competent evidence
21 supporting the application to file documents under seal must be provided by
22 declaration.

23
24 Any document that is not confidential, privileged, or otherwise protectible in
25 its entirety will not be filed under seal if the confidential portions can be redacted.
26 If documents can be redacted, then a redacted version for public viewing, omitting
27 only the confidential, privileged, or otherwise protectible portions of the document,
28

1 shall be filed. Any application that seeks to file documents under seal in their
2 entirety should include an explanation of why redaction is not feasible.

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5 **TERMS OF STIPULATED PROTECTIVE ORDER RE CONFIDENTIAL**
6 **INFORMATION**

7
8 A. DEFINITIONS

9
10 1. As used herein, the term “confidential information” means: (a)
11 any type of information that has not been made generally available to the public and
12 the disclosure of which the disclosing party contends would cause harm to the
13 disclosing party’s business operations or interests, which could include, but would
14 not be limited to, contracts, customer data, costs of goods or services sold,
15 manufacturing or other costs of doing business, employee personnel information,
16 sales records, inventory sheets, and business strategies; (b) data derived from such
17 confidential information, including any summaries, compilations, quotes, or
18 paraphrases thereof; and (c) any other oral, written, or recorded material that
19 consists of or contains trade secrets (as defined in CALIFORNIA CIVIL CODE
20 § 3426.1(d)) or other confidential research, development, or commercial information
21 and the disclosure of which would result in competitive harm, and for which the
22 designating party has taken reasonable measures to maintain their confidential, non-
23 public status; and (d) information subject to federal or state privacy rights.

24
25 2. As used herein, the terms “document,” “documents,” “tangible
26 things,” “recordings,” and “photographs” mean documents, writings, tangible
27 things, recordings, and photographs as defined in FED. R. CIV. P. 34(a) and FED. R.
28 EVID. 1001, and include, but are not limited to, records, exhibits, reports, samples,

1 transcripts, video or audio recordings, disks, affidavits, briefs, summaries, notes,
2 abstracts, drawings, company records and reports, answers to interrogatories,
3 responses to requests for admissions, and motions, including copies or computer-
4 stored versions of any of the foregoing.

5
6 **B. DESIGNATION OF CONFIDENTIAL INFORMATION**

7
8 1. This Protective Order applies to all discovery responses,
9 documents, testimony, and other materials containing confidential information
10 disclosed in this action that are designated by a party, or by a third party which or
11 who has agreed in writing to be bound by this Stipulated Protective Order Re
12 Confidential Information, as CONFIDENTIAL, in the manner described below,
13 whether such disclosure is by order of the Court, by response to questions in a
14 deposition, written interrogatories, requests for the production of documents and
15 other tangible things, requests for admission, response to a subpoena, or any other
16 discovery undertaken in this action.

17
18 2. A party that provides information may designate it as
19 confidential only when such party in good faith believes it contains confidential
20 information. A party designating information as confidential should take reasonable
21 care to designate only that information, documents, items or oral or written
22 communications that the party reasonably believes to qualify for protection. If it
23 comes to a party's or a non-party's attention that information or items that it
24 designated for protection do not qualify for protection initially asserted, that party or
25 non-party should promptly notify all other parties that it is withdrawing the mistaken
26 designation.

27
28 Any party may protect information it believes constitutes confidential

1 information by designating such information as CONFIDENTIAL prior to or at the
2 time of disclosure of such information. Such designation shall be accomplished by
3 placing the notation CONFIDENTIAL (or some notation essentially equivalent to
4 the phrase CONFIDENTIAL) on every page of each document or portion thereof so
5 designated. In the case of confidential information disclosed in a non-paper medium
6 (e.g., videotape, audiotape, computer disks, etc.), the notation CONFIDENTIAL
7 shall be affixed to the outside of the medium or its container so as to clearly give
8 notice of the designation. Such designation is deemed to apply to the document
9 itself and to the confidential information contained therein.

10
11 3. Except as set forth in this Protective Order, designated
12 confidential information shall be used solely for the purposes of this litigation and
13 shall not be used for any other purpose, including, without limitation, any business
14 or commercial purpose, or dissemination to the media. Confidential information so
15 designated shall not be disclosed to anyone other than those persons permitted by
16 the Protective Order, except as may be ordered by the Court or agreed to in writing
17 by the producing party. If any information designated by a party as
18 CONFIDENTIAL is thereafter used by a party to which it has been produced or
19 disclosed as part of a paper filed or lodged with the Court in this action or in a
20 response to a discovery request in this action, the party using that information shall
21 take all reasonable steps to preserve the continued confidentiality of that designated
22 confidential information.

23
24 4. The Parties shall use reasonable care to avoid designating any
25 materials as CONFIDENTIAL that are (a) not entitled to such designation, or (b) are
26 generally available to the public.

27
28 5. The terms of this Protective Order shall not apply to or restrict

1 the disclosure or use by a producing party or its counsel of the producing party's
2 own confidential information. The voluntary disclosure of confidential information
3 by a producing party, however, may provide grounds for an opposing party to
4 challenge the confidential designation of the same information pursuant to Section
5 E, below.

6
7 6. A party serving a subpoena or demanding discovery from any
8 third party shall serve a copy of this Protective Order on the third party concurrently
9 with the subpoena or discovery demand.

10
11 C. DISCLOSURE OF DESIGNATED CONFIDENTIAL INFORMATION

12
13 1. The Parties, counsel for the Parties, and all persons to whom
14 confidential information is disclosed under the terms of this Protective Order shall
15 maintain all designated confidential information in confidence and shall not disclose
16 such information, directly or indirectly, to any person except as provided in this
17 Protective Order.

18
19 2. Access to confidential information designated as
20 CONFIDENTIAL shall be limited to the following persons:

21 a. The attorneys for the Parties (including both outside
22 counsel and in-house counsel) and their support personnel (*e.g.*, legal assistants and
23 copy services);

24 b. Current and former employees of the Parties involved in
25 the prosecution or defense of the litigation, and to whom disclosure of the
26 confidential information is reasonably necessary for the purposes of this litigation;

27 c. The Court and court personnel of any court having
28 jurisdiction over any proceedings involved in this litigation;

1 d. Court reporters, videographers, and their staffs to whom
2 disclosure is reasonably necessary for the purposes of this litigation;

3 e. Consultants and experts, who execute the Declaration
4 Confirming Compliance With Stipulated Protective Order Re Confidential
5 Information (“Compliance Declaration”) attached to this Protective Order;

6 f. Any current employee, director, agent or Rule 30(b)(6)
7 designee of the producing party.

8 g. Any former employee of a producing party that the
9 disclosing party reasonably and in good faith believes authored, received, or became
10 familiar with the confidential information in the ordinary course of his or her
11 employment by the designating party; and

12 h. Any author, original source, or prior recipient of the
13 confidential information.

14 i. Deposition witnesses who execute the Compliance
15 Declaration attached to this Protective Order;

16 j. Any other person or entity as to whom the Parties agree in
17 writing.

18 k. Any other person as to whom the Court orders.

19
20 4. A copy of any Compliance Declaration executed by any person
21 required under this Protective Order shall be maintained by counsel for the party
22 making the disclosure of another party’s designated confidential information.
23

24 **D. DEPOSITIONS**

25
26 1. With respect to the examination of witnesses upon oral
27 deposition, when designated confidential information is supplied to the deponent, or
28 when the deponent’s testimony contains, reflects, or comments on designated

1 confidential information, the deposition reporter and/or video operator shall be
2 informed of this Protective Order by the party seeking to use or disclose the
3 confidential information. The reporter and/or video operator then shall place on the
4 cover of any deposition transcript or video that contains any designated confidential
5 information the words “CONTAINS CONFIDENTIAL INFORMATION SUBJECT
6 TO A COURT PROTECTIVE ORDER.” Counsel for the Parties then shall take
7 appropriate steps to prevent any portions of any deposition transcript or video
8 designated CONFIDENTIAL from being disclosed to any person, except as
9 provided in this Protective Order.

10
11 2. All testimony at a deposition shall be presumed to be designated
12 CONFIDENTIAL if this Protective Order is invoked at the deposition until the
13 specific pages of the transcript containing designated confidential information are
14 identified and designated CONFIDENTIAL as provided below. The designating
15 party shall, within thirty (30) days after receiving a copy of the deposition transcript,
16 provide all Parties with a written list of the page(s) of the deposition transcript, and
17 any exhibits attached thereto, that the party has designated CONFIDENTIAL. Only
18 pages containing confidential information shall be so designated. If a deponent has
19 disclosed something at a deposition that a party believes should be designated as
20 confidential information, the party so believing may go back during the deposition
21 and designate that information as CONFIDENTIAL as may be appropriate.

22
23 3. If designated confidential information is to be discussed or
24 disclosed in a deposition, any party claiming such confidentiality may exclude from
25 the room any person who is not entitled to receive such confidential information
26 during that portion of the deposition in which the confidential information is
27 actually discussed or disclosed. If designated confidential information is to be
28 discussed or disclosed at a hearing or at trial, the Parties may request that the Court

1 exclude from the courtroom any person who is not entitled to receive such
2 confidential information during that portion of the hearing or trial in which the
3 confidential information is actually discussed or disclosed.

4
5 E. CHALLENGING A DESIGNATION

6
7 1. The Parties agree that they will actively work to avoid the
8 unnecessary designation of information produced in discovery in this action. If only
9 a portion of a document contains confidential information, and if reasonably
10 feasible, only that portion will be designated CONFIDENTIAL.

11
12 2. In the event that counsel for any party at any time believes that
13 designated confidential information should not be so designated, such counsel shall
14 employ the procedures of LOCAL RULES 37-1 through 37-4 to resolve that dispute.

15
16 3. The designating party bears the burden of establishing that the
17 documents designated are entitled to protection.

18
19 4. No party shall be obliged to challenge the propriety of a
20 CONFIDENTIAL designation, and a failure to do so shall not preclude a subsequent
21 attack on the propriety of such designation.

22
23 F. INADVERTENT FAILURE TO DESIGNATE

24
25 1. The inadvertent failure to designate confidential information as
26 CONFIDENTIAL prior to or at the time of disclosure shall not operate as a waiver
27 of a party's right to designate such information as CONFIDENTIAL after such
28 disclosure.

1 2. In the event that confidential information is designated as
2 CONFIDENTIAL after disclosure, the receiving party shall employ reasonable
3 efforts to ensure that all previously disclosed information is subsequently treated as
4 CONFIDENTIAL, as appropriate, pursuant to the terms of this Protective Order.

5
6 3. Should any document or information designated as
7 CONFIDENTIAL be disclosed, through inadvertence or otherwise, to any person or
8 party not authorized to see such materials under this Protective Order, then the
9 disclosing party shall immediately procure the return of the material, and inform
10 counsel for the designating party whose confidential information has thus been
11 disclosed of all relevant information concerning the nature and circumstances of
12 such disclosure. The disclosing party shall also take all reasonable measures
13 promptly to ensure that no further or greater unauthorized disclosure of the
14 Confidential Information occurs.

15
16 G. CUSTODY AND DISPOSITION OF CONFIDENTIAL INFORMATION

17
18 1. Confidential information designated CONFIDENTIAL shall be
19 maintained in the custody of counsel for the Parties, except for information in the
20 custody of: (a) the Court; (b) any court reporter transcribing testimony given in this
21 action, for the limited purpose of rendering his or her normal transcribing services;
22 and (c) persons to whom the confidential information may be disclosed pursuant to
23 the terms of the Protective Order, including consultants and experts, to the extent
24 necessary for their involvement in the litigation. Except for the Court, a person with
25 custody of information designated CONFIDENTIAL shall maintain it in a manner
26 that limits access to it to only those persons entitled under this Protective Order to
27 examine it.

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1 2. Unless agreed otherwise in writing, at the conclusion of this
2 litigation, whether by settlement or final decision of the Court of last resort, the
3 Parties, counsel for the Parties, and all persons who executed the Compliance
4 Declaration agree that they will destroy or return to the producing party all copies of
5 any documents, other than attorney work product, containing designated
6 confidential information produced by a party. Notwithstanding the foregoing,
7 counsel of record shall be permitted to retain a file copy of all pre-trial, trial, and
8 post-trial materials, depositions and deposition exhibits, and document databases.
9 Such file copies must be maintained under the conditions of maintaining
10 CONFIDENTIAL documents as set forth above.

11

12 H. MISCELLANEOUS PROVISIONS

13

14 1. The provisions of this Protective Order apply to all proceedings
15 in this action, including all appeals, arbitrations, mediations, and proceedings upon
16 remand, unless the matter proceeds to trial. The Parties will work with the Court to
17 determine whether evidence proffered at trial should continue to be treated as
18 CONFIDENTIAL and, if so, what protection, if any, may be afforded to such
19 information at trial.

20

21 2. A designation of confidentiality pursuant to this Protective Order
22 shall be effective and shall be respected by the Parties and all persons in any way
23 involved in these proceedings or to whose attention confidential information shall
24 come unless and until otherwise ordered by the Court or stipulated by the Parties.
25 These obligations of confidentiality and non-disclosure shall survive the conclusion
26 of this action unless and until otherwise ordered by the Court, or until the producing
27 parties stipulate that designated confidential information may be disclosed.

28

1 3. By entering into this Protective Order, no party waives any
2 objections it might have to the production of documents covered by this Protective
3 Order.

4
5 4. No party to this action, by entering into this Protective Order, by
6 designating certain information as CONFIDENTIAL, or by acquiescing in any other
7 party's designation, shall be deemed to have admitted or agreed that any such
8 designated information is, in fact, a trade secret or other confidential research,
9 development, or commercial information.

10
11 5. The Court retains jurisdiction even after termination of this
12 action to enforce this Protective Order and to make such deletions from or
13 amendments, modifications, and additions to the Protective Order as the Court may
14 from time to time deem appropriate. The Parties, and any producing party, reserve
15 all rights to apply to the Court at any time, before or after termination of this action,
16 for an order modifying this Protective Order or seeking further protection against
17 disclosure or use of claimed confidential information.

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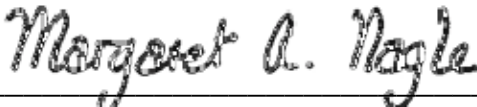
1 I. FILING OR LODGING UNDER SEAL

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When a party wishes to include information designated as “CONFIDENTIAL” in any papers filed with the Court, the party submitting the information shall submit the information "UNDER SEAL" and make an application or motion to the Court seeking to seal same pursuant to Civil Local Rule 79-5.1. An application or motion to seal the documents shall be filed by the party which or who seeks to seal the information, the party who or which has designated the information “CONFIDENTIAL,” or any other affected party or non-party.

IT IS SO ORDERED.

DATED: October 6, 2010



Margaret A. Nagle
United States Magistrate Judge

1 **DECLARATION CONFIRMING COMPLIANCE WITH STIPULATED**
2 **PROTECTIVE ORDER RE CONFIDENTIAL INFORMATION**

3
4 I, _____, hereby declare:

5
6 1. My address is _____.

7 My telephone number is (_____) _____ - _____.

8
9 2. I have read, understand and agree to be bound by the terms of the
10 Stipulated Protective Order Re Confidential Information (“Protective Order”),
11 entered in this action, *Alvarado, et al. v. U.S. Bank, National Association*, Case No.
12 SACV 07-0615 DOC (CTx), in the United States District Court, Central District of
13 California.

14
15 3. I understand that this Protective Order requires me not to
16 disclose any information designated as CONFIDENTIAL, which is provided to me
17 in the course of my involvement in this litigation, to any person not authorized by
18 this Protective Order to receive such information.

19
20 4. I agree that I shall return or destroy all documents containing any
21 information designated as CONFIDENTIAL that have been provided to me,
22 together with any work product including such information designated as
23 CONFIDENTIAL, upon demand by the Court or the counsel or party who furnished
24 such information to me.

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5. I consent to the jurisdiction of the United States District Court for the Central District of California with respect to any actions of any kind whatsoever relative to the enforcement of the Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____, 20__ at _____ (city), _____ (state).

Signature